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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
UNITED STATES DEPARTMENT OF COMMERCE

In the Matter of

Preemption of Local Zoning
Regulation of Satellite Earth
Stations

IB Docket No. 95-59

DA 91-577

45-DSS-MISC-93

Comments of AT&T Corp.

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AT&T Corp. ("AT&T") hereby comments on the Commission's Order and Further Notice of Proposed Rulemaking addressing the preemption of local governmental and nongovernmental restrictions on satellite antennas.^{1/} The Commission in the Order revised its rules governing preemption standards for local government regulation of satellite antennas and the procedures for Commission enforcement of that preemption power. In the Further Notice, the Commission sought comment on its implementation of Section 207 of the Telecommunications Act of 1996, which requires the Commission to promulgate regulations to prohibit restrictions (by a local governmental or nongovernmental authority) that impair a viewer's ability to receive direct broadcast satellite services.

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^{1/} Preemption of Local Zoning Regulation of Satellite Earth Stations, FCC 96-78, released March 11, 1996 (hereafter cited as "Order" and "Further Notice").

As detailed herein, AT&T supports the Commission's proposal in the Further Notice to extend its new satellite antenna preemption policies to private, non-governmental DBS-type antenna restrictions. AT&T additionally requests that the Commission clarify that these new preemption regulations apply equally to receive-only and to transmit and receive earth stations. AT&T believes that such an interpretation will well serve the public interest by supporting the ubiquitous availability of a wide variety of broadband communications satellite services.

AT&T is interested in this proceeding because the Commission's proposal should make it easier for AT&T and its customers to deploy satellite antennas. AT&T now offers many different satellite services, including VSAT services through its AT&T Tridom subsidiary, data and video distribution services through its Skynet offerings over the TELSTAR satellites, and DBS services as a result of its relationship with DirectTV. AT&T is also planning to expand its satellite service offerings. AT&T has applied for authority to construct, launch and operate the VoiceSpan® system of twelve Ka-band satellites. The VoiceSpan Ka-band satellites will provide a variety of two-way interpersonal communication services and multimedia applications using 0.66 meter satellite antennas installed at the customer's premises. The VoiceSpan system will make a multitude of services possible, using transmission rates spanning from 32 Kbps conventional voice and data to broader-band ISDN at rates of 144 Kbps to 1.544 Mbps.

AT&T generally supports the preemption rules adopted by the Commission in the Order and proposed to be extended in the Further Notice. The use of presumptions for preempting local regulations that affect the installation, maintenance or use of two meter (or less) antennas in commercial areas, or one meter (or less) antennas in residential areas strikes an appropriate balance between the federal policy favoring the widespread availability of satellite services and the local interest in zoning regulation. AT&T also believes that the procedural reforms adopted by the Commission will make it easier for a satellite dish owner to obtain Commission review of any local requirements inhibiting use of that antenna.

There is one area where AT&T believes the Order does not go far enough -- the failure to address the possible preemption of nonfederal regulation of radio frequency ("RF") emissions. As a result, the Commission's preemption rules govern receive-only antennas, but do not necessarily address transmit/receive satellite antennas, even though such antennas may very well be the same size as the DBS antennas addressed by the Commission. AT&T does not believe that such differentiation is necessary or beneficial.

In the Order, the Commission indicated that because it had not proposed preemption of local regulation of RF emissions, the record was inadequate to adopt such a policy.^{2/} AT&T believes, however, that the Commission can and should take such action in addressing the issues raised by the Further Notice.

^{2/} Order at ¶ 52.

The Commission's powers encompass the authority to adopt such a preemption policy. Moreover, such a decision will well serve the public interest by helping to ensure that beneficial new satellite services, such as AT&T's proposed VoiceSpan offerings, will be widely available.

The Commission acknowledges that it has broad preemptive powers stemming from Congress' grant of authority in the Communications Act.^{3/} While Section 207 of the Telecommunications Act of 1996 may have in some respects expanded the Commission's preemption authority by extending it to cover non-governmental restrictions,^{4/} it by no means restricted the broad authority already possessed by the Commission. Although the Commission may not have previously chosen to exercise that authority to preempt local regulation of transmit/receive satellite antennas, it was not precluded from doing so by any limitation in its preemption authority.

Several recent developments support the Commission now exercising its preemption authority with respect to transmit/receive satellite antennas. From a technology perspective, advances in satellite design and use of the Ka band are making possible two-way satellite services to households and businesses using antennas less than one meter in diameter. Transmitting satellite antennas thus are no longer likely to reside only in commercial neighborhoods, but instead are anticipated to be deployed ubiquitously.

^{3/} E.g., Order at ¶'s 12 and 16.

^{4/} Further Notice at ¶'s 56-57.

The antennas for these Ka band services are roughly the same size as the DBS dishes that the Commission (and Congress) are attempting to prevent the local governments from hindering. AT&T does not believe that there is a valid basis for distinguishing between these types of antennas. Indeed, because the Ka band satellite systems may also transmit, inter alia, video programming to subscribers, local restrictions singling out transmit/receive antennas will conflict with the federal policy encouraging the right of subscribers to receive satellite-delivered video programming services.

AT&T does not believe that there are any significant differences between transmit/receive and receive-only antennas that would warrant differing restrictions from the local authorities' perspective. The size and appearance of the antennas are otherwise similar, and so ought to be treated the same. AT&T believes that it would interfere with the federal policy supporting the deployment of satellite antennas if the local jurisdictions sought to impose standards that differed depending on whether the antenna was a receive-only or a transmit/receive antenna. Under these circumstances, the Commission's broad preemption authority would allow the Commission to preempt any such inconsistent local regulations.

AT&T also believes that the public interest would be well served by preempting local restrictions on small transmit/receive satellite antennas. Any such local restrictions that are inconsistent with the Commission's (and Congress') policies favoring the deployment of these relatively small (less than one meter) antennas would make it difficult, if not

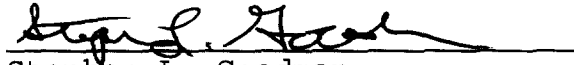
impossible, to deploy AT&T's VoiceSpan services ubiquitously. As a result, many Americans would be denied the opportunity to take advantage of the beneficial services made possible by these Ka band services.

Through VoiceSpan's efficient use of the Ka band, users in the United States, its major trading partners, and many underserved areas of the world will gain access to services ranging from basic telephone connectivity to advanced multimedia communications. In doing so, the VoiceSpan system will provide additional important arteries for the National Information Infrastructure ("NII") and the Global Information Infrastructure ("GII"), with accompanying potential benefits for domestic and international education, health care, and employment. Moreover, the construction, launch and operation of the VoiceSpan system will directly lead to the creation of thousands of jobs, and it will indirectly create thousands of additional jobs because of the increased efficiency made possible by these new services.

The VoiceSpan system will bridge the gap between an advanced multimedia infrastructure and a more traditional voice-oriented infrastructure. The VoiceSpan system is representative of AT&T's commitment to providing consumers with increasingly powerful means of communication. This progress will continue as AT&T seeks to remain on the cutting edge of the communications industry. However, these benefits will not be realized if there are significant impediments to the ability of a subscriber to install the required 0.66 meter antenna as a result of local regulations. Thus, AT&T urges the Commission to apply the same preemption tests (including the presumption of unreasonableness

to any local ordinances that impair the use of satellite antennas less than one meter in diameter in residential areas) for transmit/receive antennas that it recently adopted for receive-only antennas.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen L. Goodman", is written over a horizontal line.

Stephen L. Goodman
William F. Maher, Jr.
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, N.W.
Suite 650 East
Washington, D.C. 20005
(202) 371-9100

Counsel for AT&T Corp.

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